

## NELLIE V. LOHRY

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AUGUST 22, 1960.—Ordered to be printed

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MR. EASTLAND, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 3040]

The Committee on the Judiciary, to which was referred the bill (S. 3040) for the relief of Nellie V. Lohry, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

## PURPOSE

The purpose of the bill is to pay the sum of \$3,000 to Nellie V. Lohry of Ashland, Nebr., as an additional amount for certain property purchased from the said Nellie V. Lohry and Fred H. Lohry (deceased), pursuant to an option signed by them on November 14, 1941, by the United States in connection with the construction of an Army ordnance plant, such option having been exercised by the United States notwithstanding a previous attempt made on behalf of the said Nellie V. Lohry and the said Fred H. Lohry (deceased) by the project officer acquiring such property to have such option withdrawn on the grounds that it did not adequately reflect the value of the property.

## STATEMENT

In a report, dated July 19, 1960, to the Committee on the Judiciary on the bill, the Department of the Army advised the committee that in spite of the equitable and compassionate aspects of this case the necessity for uniformity of contract administration and the continuing validity of Government contracts require that the Department not report favorably on this bill.

The Department of the Army set forth the facts in the case and its recommendations in regard to them as follows:

Records of the Department of the Army show that the United States in 1942 acquired fee title to 17,258 acres of land in Saunders County, Nebr., for the establishment and construction of the Nebraska Ordnance Plant. The bene-

ficiary of S. 3040 and her husband, Fred H. Lohry, were the owners of a 160-acre tract which was part of the proposed plant area. An appraisal was made of the Lohrys' land by a field representative of the Quartermaster Corps, and based on this appraisal an option contract was signed by the Lohrys on November 14, 1941. The net purchase price stated in the contract was \$16,505.50.

The option agreement was forwarded by the project manager in Nebraska to the War Department in Washington, D.C., on November 19, 1942, for acceptance and execution on behalf of the United States. On November 25, 1941, a contracting officer in the Office of the Quartermaster General accepted the option on behalf of the United States, and on the same day mailed notice of the acceptance to Mr. Lohry.

On November 24, 1941, the acquisition project supervisor wrote a letter concerning the Lohrys' property to the Office of the Quartermaster General in which he stated "\* \* \* the appraisers have made a very careful review of this farm, and after comparing the appraisal of this farm with those on adjoining farms, have decided that the value of this farm should be increased." This letter was received in Washington on November 26, 1941, 1 day after the option agreement had been accepted by the United States.

On November 29, 1941, the chairman of the Saunders County Defense Committee wrote a letter to the Office of the Quartermaster General on behalf of the Lohrys. The letter stated that the Lohrys had signed an option based on the price of \$102 an acre, but that other farms of the same type "\* \* \* are being optioned at \$145 to \$160 per acre." The chairman of the committee, after discussing the Lohrys' situation, requested that the option agreement be reconsidered. On December 1, 1941, the Office of the Quartermaster General advised the acquisition project supervisor that as the option had been accepted on November 25, 1941, it became a binding contract as of that date and that consequently there was "\* \* \* no authority to return options to landowners for the purpose of increasing the purchase price of land after an agreement as to price has been reached." On December 6, 1941, the chairman of the Saunders County Defense Committee was likewise advised that the Government had no authority to renegotiate the contract. Accordingly, on December 9, 1941, the Lohrys agreed to go through with the contract as agreed upon. Nevertheless, the chairman of the Saunders County Defense Committee stated that he was told that Mrs. Lohry "signed the option only because she felt that he [Mr. Lohry] was going to have a relapse of his mental condition and as he was in such a highly nervous state she thought it would be better to get it over with."

The purchase of the Lohrys' farm was closed by the delivery of a deed from the Lohrys to the United States on January 20, 1942, at which time payment of the purchase price was made. At the time of closing, a further deduction of \$12 was agreed upon, representing the salvage value of some minor structures which the Lohrys were allowed to remove.

Although records of the Department of the Army do not show that a formal reappraisal of the Lohrys' property was made, it appears quite likely that if the acquisition project supervisor in Nebraska had telephoned Washington, or if the acceptance of the option by the Government had been delayed at least 1 day, that a reappraisal would have been completed and an increase in price would have been recommended. However, as a binding agreement had been entered into, the War Department (now the Department of the Army) was and is without authority to modify the contract for the purpose of increasing the purchase price, in spite of the equitable and compassionate aspects of this case. The necessity for uniformity of contract administration and the continuing validity of Government contracts require that this Department not report favorably on this bill.

Due to the fact that a formal reappraisal was not made, this Department is unable to state what the increase in the purchase price would have been if the recommendation of the acquisition project supervisor had been received prior to the acceptance of the option agreement by the Government. However, it is noted for the committee's information that properties surrounding the Lohrys' farm were acquired by direct purchase at a range of \$119 to \$126 an acre. The price of those properties acquired by condemnation proceedings ranged from \$90 to \$129 an acre. The latter awards were based on appraisals made by the Government. The Lohrys' property was acquired at an overall average of \$103 an acre including improvements.

The cost of this bill, if enacted, will be \$3,000.

The committee believes that the equitable and compassionate aspects of the case are such as to warrant relief on an equitable basis by private legislation and accordingly recommends the bill favorably.

Attached and made a part of this report is a letter, dated July 19, 1960, from the Department of the Army.

DEPARTMENT OF THE ARMY,  
*Washington, D.C., July 19, 1960.*

Hon. JAMES O. EASTLAND,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 3040, 86th Congress, a bill for the relief of Nellie V. Lohry.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Nellie V. Lohry of Ashland, Nebr., the sum of \$3,000. The payment of such sum shall be in full settlement of all her claims against the United States for payment of an additional amount for certain property purchased from the said Nellie V. Lohry and Fred H. Lohry (deceased), pursuant to an option signed by them on November 14, 1941, by the United States in connection with the construction of an Army ordnance plant, such option having been exercised by the

United States notwithstanding a previous attempt made on behalf of the said Nellie V. Lohry and the said Fred H. Lohry (deceased) by the project officer acquiring such property to have such option withdrawn on the grounds that it did not adequately reflect the value of the property."

The Department of the Army is opposed to the enactment of the above-mentioned bill.

Records of the Department of the Army show that the United States in 1942 acquired fee title to 17,258 acres of land in Saunders County, Nebr., for the establishment and construction of the Nebraska Ordnance Plant. The beneficiary of S. 3040 and her husband, Fred H. Lohry, were the owners of a 160-acre tract which was part of the proposed plant area. An appraisal was made of the Lohry's land by a field representative of the Quartermaster Corps, and based on this appraisal an option contract was signed by the Lohrys on November 14, 1941. The net purchase price stated in the contract was \$16,505.50.

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The cost of this bill, if enacted, will be \$3,000.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

HUGH M. MILTON II,  
*Acting Secretary of the Army.*

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